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### **REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed November 2, 2004. In the Office Action, the Examiner notes that claims 1-62 and 64-65 are pending, of which claims 62 and 65 are allowed, claims 1-61 stand rejected and claim 64 is objected to.

In view of both the amendments presented above and the following discussion, the Applicants submit that none of the claims now pending in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Thus, the Applicants believe that all of these claims are now in allowable form.

### **ALLOWABLE SUBJECT MATTER**

The Applicants thank the Examiner for the allowance of claims 62 and 65.

### **OBJECTIONS**

The Examiner has objected to claim 64 because it depends on canceled claim 63. In response, the Applicants have amended claim 64 to be dependent from claim 62. As such, Applicants submit that the Examiner's objection is moot and should be withdrawn.

### **REJECTIONS**

#### **REJECTION OF CLAIMS UNDER 35 U.S.C. §102**

##### **Claims 1-6**

The Examiner has rejected claims 1-6 under 35 U.S.C. §102(e) as being anticipated by Killian U.S. Patent No. 6,163,316 (hereinafter "Killian"). The Applicants respectfully traverse the rejection.

Applicants' independent claim 1 (and similarly independent claim 4) recites:

"A data structure, comprising:  
a plurality of logically linked applets, each of said applets defining a graphical layer, a video layer and a control layer, said control layer of each respective applet logically linking a graphical layer object to another applet." (emphasis added).

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"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984)(citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 U.S.P.Q. 193 (Fed. Cir. 1983)) (emphasis added). Killian fails to disclose each and every element of the claimed invention, as arranged in the claim.

Specifically, the Killian reference fails to teach the feature of a plurality of logically linked applets, each of said applets defining a graphical layer, a video layer, and a control layer, wherein the control layer of each respective applet logically links a graphical layer object to another applet. Rather, the Killian reference merely discloses an electronic programming guide JAVA applet or application that provides various functionalities that allow viewers to more intelligently select, schedule, and record viewing opportunities according to viewer profiles and information retrieved from database 48. (See, Killian, col. 5, lines 1-10).

In particular, the Killian reference discloses a JAVA based operating hierarchy, where the first level includes conventional television-related hardware, the second level includes one or more interactive television protocols (e.g., DAVID or ICAP), a third level includes a basic JAVA operating system, and a fourth level that includes "a JAVA toolkit 58 having a collection of APIs 60 that cooperate with JAVA operating system 56 to allow JAVA applets 64 and applications 62 in fifth level 59 to perform functionalities associated with JAVA applets 64 and applications 62. In one embodiment, APIs 60 of toolkit 58 allow platform 12 to support JAVA applets 64 downloaded from the Internet over link 14, JAVA applications 62 installed locally on receiver 10 or any processing platform associated with receiver 10, or any other appropriate JAVA program that uses the television-related functionalities of APIs 60." (See, Killian, col. 6, lines 6-42).

Nowhere in the Killian reference is there any teaching, or even suggestion, of "a plurality of logically linked applets, each of said applets defining a graphic layer, a video layer, and a control layer." That is, each of the logically linked applets define three separate and independent types of layers, which include a graphic layer, a video layer, and a control layer.

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Support for the Applicants' invention, which specifies the specific type of applet being utilized is described beginning on page 13, line 30, where, the Applicants clearly define in their specification that "the background video comprises a video layer, while the overlay or foreground video comprises a graphics layer. The generation of both the video layer and graphics layer is controlled by a control layer. Briefly, the video layer comprises displayed video images produced using, e.g., information contained in an applet. The graphics layer comprises OSD (overlay(s) including graphical objects that are associated with applets stored in either subscriber or provider equipment. The OSD overlay(s) are displayed over the video layer. The control layer comprises a command processing and logical operations layer. The control layer retrieves the applets associated with graphic layer objects selected by a user, executes the applets, and provides video information to the video layer and object information to the graphics layer." (See, Applicants' specification, page 13, line 30 to page 14, line 9).

The Killian reference is devoid of any teaching or suggestion of logically linked applets where each applet defines a graphic layer, a video layer, and a control layer. Rather, Killian discloses electronic programming guide JAVA applet or application allows viewers to select, schedule, and record viewing opportunities according to viewer's profile and program listing information retrieved from the databases. (see Killian, column 6, lines 26-31). The fact that the Killian reference discloses that each API 60 includes a collection of JAVA functions and supporting classes that are related to a particular task or combination of associated tasks that extend the basic JAVA APIs does not necessitate that each individual applet defines a graphical layer, a control layer, and a video layer. Rather, Killian discloses a control API contains classes that support functions to integrate television signals into JAVA applets and applications, as well as classes that control video and audio properties associated with the television, and so forth. (see Killian, column 6, lines 57-column 7, line 7). Nowhere in the Killian reference is there any teaching, or even suggestion that each applet of the plurality of logically linked applets, defines a graphic layer, a video layer, and a control layer. Therefore, the Killian reference fails to teach each and every element of the claimed invention, as arranged in the claim.

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As such, the Applicants submit that independent claims 1 and 4 are not anticipated and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Furthermore, claims 2-3 and 5-6 depend, either directly or indirectly, from independent claims 1 and 4 and recite additional features thereof. As such, and for at least the same reasons discussed above, the Applicants submit that these dependent claims also fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Therefore, the Applicants respectfully request that the rejection of claims 1-6 be withdrawn.

### **REJECTION OF CLAIMS UNDER 35 U.S.C. §103**

#### **Claims 7-61**

The Examiner has rejected claims 7-61 under 35 U.S.C. §103(a) as being unpatentable over Davis et al. U.S. Patent No. 5,822,123 (hereinafter "Davis") in view of Killian. Applicants respectfully traverse the rejection.

Independent claim 7 (and similarly, independent claims 40, 45, 51, 58 and 62) recites:

"A guide page comprising:

a video layer forming background video of said guide page and comprising a plurality of title objects, wherein the video layer is derived from a video stream received from a transmission source;

a graphics layer comprising a plurality of overlay objects selectively overlaying said video layer, wherein each of the overlay objects is associated with a respective title object in the video layer and is selectively controlled to visually emphasize or de-emphasize a title object in the video layer of said guide page; and

a control layer for controlling generation of the video and graphics layers, said video, graphics, and control layers being defined by an applet originating at said transmission source, and said overlay objects of said graphics layer being logically associated with another applet at said transmission source." (emphasis added)

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 U.S.P.Q. 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible

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to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 U.S.P.Q. 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 U.S.P.Q. 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added).

The Davis reference discloses "the data stream may contain, for example, information about programs or services available in a particular market, geographical or otherwise. The input signal 11 can originate, for example, as part of a standard broadcast, cablecast or satellite transmission, or other form of data transmission. The transmitted data stream may additionally contain application software for implementing or updating the electronic program guide at the user's site." (See, Davis col. 9, lines 8-14 and 29-31).

Nowhere in the Davis reference is there any teaching, or even suggestion of "a control layer for controlling generation of the video and graphics layers, said video, graphics, and control layers being defined by an applet originating at said transmission source, and said overlay objects of said graphics layer being logically associated with another applet at said transmission source." In fact the Davis reference is completely silent with regard to applets, as well as the video, graphics, and control layers being defined by an applet originating at the transmission source.

Specifically, "the background video comprises a video layer, while the overlay or foreground video comprises a graphics layer. The generation of both the video layer and graphics layer is controlled by a control layer. Briefly, the video layer comprises displayed video images produced using, e.g., information contained in an applet. The graphics layer comprises OSD overly(s) including graphical objects that are associated with applets stored in either subscriber or provider equipment. The OSD overlay(s) are displayed over the video layer. The control layer comprises a command processing and logical operations layer. The control layer retrieves the applets associated with graphic layer objects selected by a user, executes the applets, and provides video information to the video layer and object information to the graphics layer." (See, Applicants' specification page 13, line 30 to page 14, line 9).

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The Killian reference fails to bridge the substantial gap between the Davis reference and the Applicants' invention. In particular, the Killian reference discloses

...each API 60 includes a collection of JAVA functions and supporting classes that are related to a particular task or combination of associated tasks and extend the basic JAVA APIs discussed above. For example, a control API 60 contains classes that support functions to integrate television signals into JAVA applets 64 and applications 62 as discussed above. Control API 60 also includes classes that control video and audio properties associated with television 40, for example, and not by way of limitation: controlling television overlay operations, such as color overlay keying to overlay JAVA animations; setting channel numbers; setting the position, width, and height of the television signal video component within an integrated display; turning the video or audio on or off; ...(see Killian, column 6, lines 57-column 7, line 3)

Even if the two references could somehow be operably combined, the combination would merely disclose sending a data stream including information about programs and services from provider equipment to subscriber equipment, and the electronic programming guide is supported by a JAVA applet or application which allows viewers to select, schedule, and record viewing opportunities according to viewer profiles and program listing information. Nowhere in the combined references is there any teaching or suggestion that the applets used to support the electronic programming guide are sent from the provider equipment and include a control layer, a video layer and a graphics layer, which are defined by an applet originating at the transmission source. That is, the combination of Davis and Killian fails to teach or suggest "said video, graphics, and control layers being defined by an applet originating at said transmission source." Therefore, the combination of Davis and Killian fails to teach or suggest the Applicants' invention as a whole.

As such, the Applicants submit that independent claim 7, and similarly independent claims 40, 45, 51, 58, and 62 are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Furthermore, claims 8-39, 41-44, 46-50, 52-57 and 59-61 respectively depend from independent claims 7, 40, 45, 51, 58, and 62 and recite additional features thereof. As such, and for at least the same reasons as discussed above, the Applicants respectfully submit that these dependent claims are also non-obvious and fully satisfy the requirements of 35 U.S.C.

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§103 and are patentable thereunder. Therefore the Applicants respectfully request that the rejection be withdrawn.

**CONCLUSION**

Thus, the Applicants submit that all of the claims presently in the application are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Steven M. Hertzberg or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted

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